

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: James Malcolm Vignoles et al.

Application No.: 09/938,489

Group No.: 2137

Filed: August 27, 2001

Examiner: Pyzocha, Michael J.

For: UPDATE STATUS ALERTING FOR A MALWARE SCANNER

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

**PETITION FOR WITHDRAWAL OF ABANDONMENT**

**REQUEST**

1. Applicants request that the abandonment of this application be withdrawn.

**PROMPTNESS OF THIS SUBMISSION**

2. This information is being submitted promptly after applicant has learned of the abandonment on the basis of the Notice of Abandonment mailed by the Office on June 4, 2008.

**SUBMISSION**

3. Submitted herewith is/are:

Exhibit A: A copy of the page of transmission on March 9, 2007, showing a Certificate of Transmission executed on March 9, 2007.

Exhibit B: A copy of the Electronic Acknowledgement Receipt generated by the Office which indicates the number of pages, as well as, the date and time this transmission was received by the Office.

Exhibit C: A copy of the Patent Application Information Retrieval (PAIR) Image File Wrapper page, showing the response received on March 9, 2007.

Exhibit D: A copy of the complete response previously filed.

Exhibit E: A copy of the Electronic Patent Application Fee Transmittal receipt and a copy of the attorney's Deposit Account Statement, in which the item corresponding to the response referred to above is noted.

**STATEMENT**

4. Applicants attest to the timely transmission of the correspondence referred to above based on a showing believed to be satisfactory to the Commissioner.
5. Please proceed with the further examination of this application on the basis of the attached copy of the papers originally filed.

### REQUEST FOR WITHDRAWAL OF ABANDONMENT

6. In consideration of these submissions, it is respectfully requested that the holding of abandonment be withdrawn.
7. Acknowledgment of the active status of this application is respectfully requested.

### FEES

8. Applicants believe that no fees are due in connection with the filing of this paper because it is our belief that the Notice of Abandonment was issued in error. However, the Commissioner is authorized to charge any additional fees that may be due (e.g. for any reason including, but not limited to, fee changes, etc.) to Deposit Account No. 50-1351 (Order No. NA11P495).

Date: August 6, 2008

Reg. No.: 41,429  
Tel. No.: 408-971-2573  
Customer No.: 28875

/KEVINZILKA/  
Signature of Practitioner  
Kevin J. Zilka  
Zilka-Kotab, PC  
P.O. Box 721120  
San Jose, CA 95172-1120

## **EXHIBIT A**

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)  
Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

NAI1P495/01.018.01

I hereby certify that this correspondence is being e-filed with the USPTO

on March 9, 2007

Signature /Erica L. Farlow/

Typed or printed name Erica L. Farlow

Application Number

09/938,489

Filed

08/27/2001

First Named Inventor

James Malcolm Vignoles

Art Unit

2137

Examiner

Pyzocha, M.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒

attorney or agent of record.

41,429

Registration number

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

/KEVINZILKA/

Signature

Kevin J. Zilka

Typed or printed name

(408) 971-2573

Telephone number

March 9, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

☐

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## **EXHIBIT B**

## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	1580765
<b>Application Number:</b>	09938489
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	2875
<b>Title of Invention:</b>	Update status alerting for a malware scanner
<b>First Named Inventor/Applicant Name:</b>	James Malcolm Vignoles
<b>Correspondence Address:</b>	Zilka-Kotab, PC - P.O. Box 721120 - San Jose CA 95172-1120 US -
<b>Filer:</b>	Kevin Joseph Zilka
<b>Filer Authorized By:</b>	
<b>Attorney Docket Number:</b>	01.018.01
<b>Receipt Date:</b>	09-MAR-2007
<b>Filing Date:</b>	27-AUG-2001
<b>Time Stamp:</b>	17:08:26
<b>Application Type:</b>	Utility

### Payment information:

Submitted with Payment	yes
Payment was successfully received in RAM	\$500
RAM confirmation Number	715

Deposit Account	501351
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# File Listing:

Document Number	Document Description	File Name	File Size(Bytes)	Multi Part /.zip	Pages (if appl.)
1	Notice of Appeal Filed	NAI1P495_NoticeOfAppeal_3-9-07_.pdf	73206	no	7

Warnings:

Information:

2	Fee Worksheet (PTO-06)	fee-info.pdf	8135	no	2
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Warnings:

Information:

Total Files Size (in bytes):	81341
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This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

## New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

## National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

## New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

## **EXHIBIT C**



09/938,489 Update status alerting for a malware scanner

08-06-  
2008::13:54:43

**This application is officially maintained in electronic form. To View: Click the desired Document Description. To Download and Print: Check the desired document(s) and click PDF.**

**Bibliographic Data**

Mail Room Date	Document Code	Document Description	Document Category	Page Count
06-04-2008	ABN	Abandonment	PROSECUTION	2
03-09-2007	N/AP	Notice of Appeal Filed	PROSECUTION	7
03-09-2007	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	2
03-09-2007	N417	EFS Acknowledgment Receipt	PROSECUTION	2
01-09-2007	CTFR	Final Rejection	PROSECUTION	8
01-09-2007	FWCLM	Index of Claims	PROSECUTION	1
01-09-2007	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
12-29-2006	SRNT	Examiner's search strategy and results	PROSECUTION	2
11-13-2006	A...	Amendment - After Non-Final Rejection	PROSECUTION	4
11-13-2006	CLM	Claims	PROSECUTION	8
11-13-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
11-13-2006	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
08-15-2006	CTNF	Non-Final Rejection	PROSECUTION	4
08-15-2006	FWCLM	Index of Claims	PROSECUTION	1
08-15-2006	ANE.I	Amendment After Final or under 37CFR 1.312, initialed by the examiner.	PROSECUTION	1
08-07-2006	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
07-24-2006	A.NE	Amendment After Final	PROSECUTION	4
07-24-2006	CLM	Claims	PROSECUTION	8
07-24-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	1
05-24-2006	CTFR	Final Rejection	PROSECUTION	9
05-24-2006	FWCLM	Index of Claims	PROSECUTION	1
05-24-2006	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
05-19-2006	SRNT	Examiner's search strategy and results	PROSECUTION	12
05-15-2006	A...	Amendment - After Non-Final Rejection	PROSECUTION	4
05-15-2006	CLM	Claims	PROSECUTION	8
05-15-2006	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	10
05-15-2006	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
02-15-2006	CTNF	Non-Final Rejection	PROSECUTION	7
02-15-2006	FWCLM	Index of Claims	PROSECUTION	1
02-15-2006	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
02-07-2006	SRNT	Examiner's search strategy and results	PROSECUTION	12
12-05-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
11-21-2005	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	1
11-21-2005	CLM	Claims	PROSECUTION	7
11-21-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
11-21-2005	RCEX	Request for Continued Examination (RCE)	PROSECUTION	4
11-07-2005	CTAV	Advisory Action (PTOL-303)	PROSECUTION	3
11-07-2005	FWCLM	Index of Claims	PROSECUTION	1

11-07-2005	ANE.I	Amendment After Final or under 37CFR 1.312, initialed by the examiner.	PROSECUTION	1
10-12-2005	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	PROSECUTION	4
10-12-2005	CLM	Claims	PROSECUTION	7
10-12-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	4
10-12-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
08-19-2005	N570	Communication - Re: Power of Attorney (PTOL-308)	PROSECUTION	2
08-05-2005	CTFR	Final Rejection	PROSECUTION	9
08-05-2005	892	List of references cited by examiner	PRIOR ART	1
08-05-2005	FWCLM	Index of Claims	PROSECUTION	1
08-05-2005	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
08-02-2005	PA..	Power of Attorney	PROSECUTION	11
07-27-2005	SRNT	Examiner's search strategy and results	PROSECUTION	11
07-05-2005	A...	Amendment - After Non-Final Rejection	PROSECUTION	2
07-05-2005	CLM	Claims	PROSECUTION	9
07-05-2005	REM	Applicant Arguments/Remarks Made in an Amendment	PROSECUTION	2
07-05-2005	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
04-14-2005	C.AD	Change of Address	PROSECUTION	1
04-05-2005	CTNF	Non-Final Rejection	PROSECUTION	9
04-05-2005	892	List of references cited by examiner	PRIOR ART	1
04-05-2005	BIB	Bibliographic Data Sheet	PROSECUTION	1
04-05-2005	FWCLM	Index of Claims	PROSECUTION	1
04-05-2005	SRFW	Search information including classification, databases and other search related notes	PROSECUTION	1
03-28-2005	SRNT	Examiner's search strategy and results	PROSECUTION	10
03-08-2005	STATUS.LET	Request for status of Application	PROSECUTION	1
03-08-2005	C.AD	Change of Address	PROSECUTION	1
12-17-2001	IMIS	Miscellaneous Internal Document	PROSECUTION	1
11-15-2001	PEFR	Applicant Response to Pre-Exam Formalities Notice	PROSECUTION	1
11-15-2001	DRW	Drawings-only black and white line drawings	PROSECUTION	5
11-15-2001	PEFR	Applicant Response to Pre-Exam Formalities Notice	PROSECUTION	1
09-26-2001	PEFN	Pre-Exam Formalities Notice	PROSECUTION	1
08-27-2001	TRNA	Transmittal of New Application	PROSECUTION	1
08-27-2001	136A	Authorization for Extension of Time all replies	PROSECUTION	1
08-27-2001	SPEC	Specification	PROSECUTION	11
08-27-2001	CLM	Claims	PROSECUTION	6
08-27-2001	ABST	Abstract	PROSECUTION	1
08-27-2001	DRW	Drawings-only black and white line drawings	PROSECUTION	5
08-27-2001	OATH	Oath or Declaration filed	PROSECUTION	2
08-27-2001	BIB	Bibliographic Data Sheet	PROSECUTION	1
08-27-2001	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
08-27-2001	WFEE	Fee Worksheet (PTO-06)	PROSECUTION	1
08-27-2001	WCLM	Claims Worksheet (PTO-2022)	PROSECUTION	1

Close Window

## **EXHIBIT D**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: James Malcolm Vignoles et al.

Application No.: 09/938,489

Group No.: 2137

Filed: August 27, 2001

Examiner: Pyzocha, M.

For: UPDATE STATUS ALERTING FOR A MALWARE SCANNER

**Mail Stop AF**

**Commissioner for Patents**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES  
(37 C.F.R. § 41.31)**

Applicant hereby appeals to the Board from the decision of the Primary Examiner, mailed January 9, 2007, for a second time rejecting claims 1-2, 9-14, 21-26, 33-37.

**1. STATUS OF APPLICANT**

This application is on behalf of other than a small entity.

**2. FEE FOR FILING NOTICE OF APPEAL**

Pursuant to 37 C.F.R. § 41.20(b)(1), the fee for the Notice of Appeal is:

Other than a small entity	\$500.00
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Notice of Appeal fee due	\$500.00
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**3. EXTENSION OF TERM**

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

**4. TOTAL FEE DUE**

The total fee due is:

Notice of Appeal fee	\$500.00
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<b>TOTAL FEE DUE</b>	<b>\$500.00</b>
----------------------	-----------------

**5. FEE PAYMENT**

Authorization is hereby made to charge the amount of \$500.00 to Deposit Account No. 50-1351 (Order No. NA11P495).

Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this transmittal is attached.

**6. FEE DEFICIENCY**

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. NA11P495).

Reg. No.: 41,429  
Tel. No.: 408-971-2573  
Customer No.: 28875

/KEVINZILKA/

Signature of Practitioner

Kevin J. Zilka

Zilka-Kotab, PC

P.O. Box 721120

San Jose, CA 95172-1120

USA

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>NAI1P495/01.018.01</b>						
<p>I hereby certify that this correspondence is being e-filed with the USPTO</p> <p>on <u>March 9, 2007</u></p> <p>Signature <u>/Erica L. Farlow/</u></p> <p>Typed or printed name <u>Erica L. Farlow</u></p>	<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%; padding: 5px;">Application Number <b>09/938,489</b></td><td style="width: 40%; padding: 5px;">Filed <b>08/27/2001</b></td></tr><tr><td colspan="2" style="padding: 5px;">First Named Inventor <b>James Malcolm Vignoles</b></td></tr><tr><td style="padding: 5px;">Art Unit <b>2137</b></td><td style="padding: 5px;">Examiner <b>Pyzocha, M.</b></td></tr></table>		Application Number <b>09/938,489</b>	Filed <b>08/27/2001</b>	First Named Inventor <b>James Malcolm Vignoles</b>		Art Unit <b>2137</b>	Examiner <b>Pyzocha, M.</b>
Application Number <b>09/938,489</b>	Filed <b>08/27/2001</b>							
First Named Inventor <b>James Malcolm Vignoles</b>								
Art Unit <b>2137</b>	Examiner <b>Pyzocha, M.</b>							
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>								
<table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record.      <b>41,429</b> Registration number _____</p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></td><td style="width: 50%; vertical-align: top; padding-left: 20px;"><p><b>/KEVINZILKA/</b></p><hr/><p style="text-align: center;">Signature</p><p><b>Kevin J. Zilka</b></p><hr/><p style="text-align: center;">Typed or printed name</p><p><b>(408) 971-2573</b></p><hr/><p style="text-align: center;">Telephone number</p><p><b>March 9, 2007</b></p><hr/><p style="text-align: center;">Date</p></td></tr></table>			<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.      <b>41,429</b> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>	<p><b>/KEVINZILKA/</b></p> <hr/> <p style="text-align: center;">Signature</p> <p><b>Kevin J. Zilka</b></p> <hr/> <p style="text-align: center;">Typed or printed name</p> <p><b>(408) 971-2573</b></p> <hr/> <p style="text-align: center;">Telephone number</p> <p><b>March 9, 2007</b></p> <hr/> <p style="text-align: center;">Date</p>				
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record.      <b>41,429</b> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>	<p><b>/KEVINZILKA/</b></p> <hr/> <p style="text-align: center;">Signature</p> <p><b>Kevin J. Zilka</b></p> <hr/> <p style="text-align: center;">Typed or printed name</p> <p><b>(408) 971-2573</b></p> <hr/> <p style="text-align: center;">Telephone number</p> <p><b>March 9, 2007</b></p> <hr/> <p style="text-align: center;">Date</p>							
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>								
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>								

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## REMARKS

The Examiner has objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. Specifically, the Examiner has asserted that “[e]ach independent claim has been amended to include at least the phrase ‘tangible computer readable medium’” and that “nowhere in the specification is this phrase disclosed.” Applicant disagrees and respectfully asserts that Page 11, lines 13-15 of the specification disclose “computer program instructions that may be stored in one or more of the random access memory 204, the read only memory 206 and the hard disk drive 210” (emphasis added), all of which are computer readable mediums.

The Examiner has rejected Claims 1-2, 9-14, 21-26, and 33-37 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner has again asserted that “[e]ach independent claim has been amended to include at least the phrase ‘tangible computer readable medium’” and that “nowhere in the specification is this phrase disclosed.” Applicant again disagrees and respectfully asserts that Page 11, lines 13-15 of the specification disclose “computer program instructions that may be stored in one or more of the random access memory 204, the read only memory 206 and the hard disk drive 210” (emphasis added), all of which are computer readable mediums.

In the Office Action mailed 01/09/07, the Examiner has responded to applicant’s above argument by arguing that “Claims 25-26 and 33-37 purport to be apparatus claims, but appear to be lacking an essential element under 112, 2<sup>nd</sup>, to support the preamble and make them apparatus claims” (see page 5, paragraph 1 of the Office Action). Applicant assumes that this argument by the Examiner refers to the above 35 U.S.C. 112, first paragraph rejection, which is addressed above.

The Examiner has rejected Claims 1-2, 9-14, 21-26, and 33-37 under 35 U.S.C. 101 as being directed towards non-statutory subject matter. Applicant respectfully disagrees with such rejection.



With respect to Claims 1, 2, and 9-12, the Examiner argues that the “computer program product” as claimed by applicant “is just the software piece and fails to include the physical article or object as the medium which establishes the statutory category.” Applicant disagrees and respectfully points out that independent Claim 1 includes “computer program product embodied on a tangible computer readable medium” (emphasis added), as claimed.

In addition, the Examiner has argued that Claims 1-2, 9-14, 21-26, and 33-37 fail to produce a useful, concrete, and tangible result in the instance when the update status of the current malware scanner matches the update status of the previous malware scanner. Specifically, the Examiner has argued that the Examiner “has reviewed the final result achieved for each condition covered, both those actually recited and those covered and not recited” and concludes that “[i]f any [condition] fail[s] to be a useful, concrete, and tangible result, then the claims are properly rejected under 35 U.S.C. 101.” The Examiner goes on to argue that “there is no useful, concrete, and tangible result when the update status of the previous scanner is the same as the update status of the current scanner.”

In addition, in the Office Action mailed 1/09/07, the Examiner has again reiterated that “there is no useful, concrete, and tangible result when the update status of the previous scanner is the same as the update status of the current scanner” and that “[w]hen these statuses are the same the only steps being performed are reading and comparing and clearly these do not result in a useful, concrete, and tangible result.”

Applicant respectfully disagrees. After careful review of 35 U.S.C. 101 and the relevant sections of the MPEP, applicant fails to find any support for the Examiner’s assertion that “[i]f any [condition] fail[s] to be a useful, concrete, and tangible result, [whether or not recited in the claims.] then the claims are properly rejected under 35 U.S.C. 101” (emphasis added). Further, applicant respectfully asserts that the claims are not limited to a situation where “the update status of the previous scanner is the same as

the update status of the current scanner,” as noted by the Examiner, and thus a rejection based on such language is clearly improper.

Applicant again points out that each of the independent claims do provide a useful, concrete and tangible result. For example, applicant claims, in part, “alert issuing logic operable if said update status of said current malware scanner does not match said update status of said previous malware scanner to issue an update status alert indicative of an out-of-date update status for whichever one of said current malware scanner and said previous malware scanner has a most out-of-date update status...change logging logic operable to log changes to said update status field to create a change history in an update status tracking database to enable identification of weaknesses within update status management based on the change history...wherein, if said current malware scanner has a less out-of-date update status than said previous malware scanner, then said update status field associated with said computer file is changed to correspond to said current malware scanner... wherein, if there is no said update status associated with said computer file at a first malware scanning, then said update status field is generated and associated with said computer file, and said update status tracking database is updated” (see the same or similar, but not necessarily identical language in each of the independent claims-emphasis added). In fact, in independent Claim 1 applicant claims a “computer program product embodied on a tangible computer readable medium operable to control a computer to issue an alert for an out-of-date update status of a malware scanner” (emphasis added), which clearly is a useful, concrete and tangible result.

Therefore, based on the limitations in Claim 1, as highlighted above, it is clear that a useful, concrete and tangible result is evident. In addition, for reasons at least substantially similar (but not necessarily identical) to those above, applicant respectfully asserts that independent Claims 13 and 25 also produce a useful, concrete and tangible result.

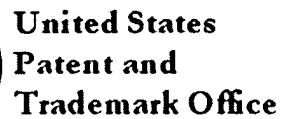
To this end, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims.

## **EXHIBIT E**

## Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	09938489			
<b>Filing Date:</b>	27-Aug-2001			
<b>Title of Invention:</b>	Update status alerting for a malware scanner			
<b>First Named Inventor/Applicant Name:</b>	James Malcolm Vignoles			
<b>Filer:</b>	Kevin Joseph Zilka			
<b>Attorney Docket Number:</b>	01.018.01			
Filed as Large Entity				
<b>Utility      Filing Fees</b>				
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
<b>Patent-Appeals-and-Interference:</b>				
Notice of appeal	1401	1	500	500
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				

Description	Fee Code	Quantity	Amount	Sub-Total In USD(\$)
Miscellaneous:				
Total in USD (\$)				500



## Deposit Account Statement

<b>Requested Statement Month:</b>	March 2007
<b>Deposit Account Number:</b>	501351
<b>Name:</b>	ZILKA-KOTAB, PC
<b>Attention:</b>	KEVIN J. ZILKA
<b>Street Address 1:</b>	P.O. BOX 721120
<b>Street Address 2:</b>	
<b>City:</b>	SAN JOSE
<b>State:</b>	CA
<b>Zip:</b>	95172-1120
<b>Country:</b>	UNITED STATES

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
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